86-1206

Supreme Court, U.S.
FILED
MAY 1 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

BENJAMIN WILLIAMS.....PETITIONER

V.

STATE OF ARKANSAS.....RESPONDENT

ON PETITION FOR WRIT OF
CERTIORARI TO THE
ARKANSAS SUPREME COURT

BRIEF FOR RESPONDENT

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ATTORNEYS FOR RESPONDENT

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REASON FOR DENYING THE PETITION FOR CERTIORARI

I.

THE ISSUE RAISED BY PETITIONER IS NOT PROPERLY BEFORE THIS COURT.

Petitioner Williams, citing Oregon v. Kennedy, 456 U.S. 667 (1982), argues that

the prosecutor in the instant case intentionally provoked the accused into seeking a mistrial, thus barring his retrial under the Double Jeopardy Clause. This specific argument is raised by Williams for the first time before this Court. In Arkansas, as a matter of appellate practice, issues not argued on appeal are considered waived. Shockley v. State, 282 Ark. 281, 668 S,.W.2d 22 (1984). Because Williams failed to follow Arkansas' appellate procedure, he cannot pursue the issue before this Court on review by writ of certiorari. Beck v. Washington, 369 U.S. 541, 549-54 (1962). Williams cannot argue that the Arkansas Supreme Court must necessarily have decided the specific issue he now raises, in its opinion in Woods v. State, 287 Ark. 212, 697 S.W.2d 890 (1985), which turns on an entirely different issue of double jeopardy.

Further, because Williams did not raise the issue of prosecutorial misconduct at the trial court level, he failed to comply with Arkansas' contemporaneous objection rule. See Fretwell v. State, 289 Ark. 91, 98, 708 S.W.2d 630, 634 (1986) and Wicks v. State, 270 Ark. 781, 785-87, 606 S.W.2d 366, 369-70 (1980). If a petitioner completely fails to make a proper objection in state court to an alleged violation of one of his rights guaranteed by the United States Constitution, this Court will not consider an argument addressing the alleged deprivation when raised for the first time before this Court on review by writ of certiorari. Moore v. Illinois, 408 U.S. 786, 799 (1972); Cardinale v. Louisiana, 394 U.S. 437 (1969); and Street v. New York, 394 U.S. 576, 582 (1969).

CONCLUSION

THEREFORE, because the issue now raised is not reviewable, respondent respectfully requests that this Honorable Court deny petitioner Williams' petition for writ of certiorari to the Supreme Court of Arkansas.

Respectfully submitted,

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